

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-11-1-5-00362-16  
45-004-13-1-5-00129-16  
45-004-15-1-5-01831-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-05-33-253-018.000-004  
**Assessment Years:** 2011, 2013 & 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated a 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on December 9, 2015. On January 26, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2013 appeal with the PTABOA. The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner initiated a 2015 appeal with the PTABOA. The PTABOA issued notice of its final determination on August 17, 2016. On October 3, 2016, Petitioner filed a Form 131 petition with the Board.
4. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
5. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on February 12, 2018. Neither the ALJ nor the Board inspected the property.
6. Petitioner James Nowacki was sworn and testified. Robert W. Metz and Gordana Bauhan, Lake County Appeal Officers, were sworn as witnesses for the Respondent.

**Facts**

- 7. The subject property is a vacant residential lot located at 8944-48 Pottowattomi Trail in Gary.
- 8. The PTABOA determined the following assessments for the parcel under appeal<sup>1</sup>:

Year	Land
2011	\$4,900
2013	\$7,900
2015	\$5,000

- 9. Petitioner requested an assessed value of \$3,500 for each year.

**Record**

- 10. The official record contains the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Petitioner Exhibit 1: PRC for 2011-2015,  
Petitioner Exhibit 2: PRC for 2013-2017,

Respondent Exhibit 1: PRC,  
Respondent Exhibit 2: Real Property Maintenance Report for 2010,  
Respondent Exhibit 3: Real Property Maintenance Report for 2011,  
Respondent Exhibit 4: Real Property Maintenance Report for 2012,  
Respondent Exhibit 5: Real Property Maintenance Report for 2013,  
Respondent Exhibit 6: Overhead GIS map of the subject property,<sup>2</sup>

Board Exhibit A: Form 131 petitions,  
Board Exhibit B: Notices of Hearing,  
Board Exhibit C: Hearing sign-in sheet,

- c. These Findings and Conclusions.

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<sup>1</sup> The property record cards (PRCs) for 2011 and 2015 do not reflect the PTABOA determinations. The PRCs erroneously show the value at \$7,800 for 2011 and \$7,900 for 2015. The PTABOA determinations shown on the Forms 115 is controlling, regardless of what the PRCs show.

<sup>2</sup> Respondent listed seven (7) exhibits on the exhibit coversheet but only six (6) exhibits were submitted. The Real Property Maintenance Report listed as Exhibit 5 was not included. The GIS map was labeled as Exhibit 6 and not Exhibit 7 as shown on the coversheet.

## **Burden**

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that an assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
13. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value decreased from 2010 to 2011. The assessed value remained the same from 2012 to 2013 and decreased from 2014 to 2015. (There apparently were no appeals for 2012 or 2014.) Therefore, Petitioner has the burden of proof for all the years at issue.

## **Contentions**

16. Summary of Petitioner's case:
  - a. Petitioner acquired the property for \$25 at auction. He testified that hundreds of buyers were at the auction, but no one was willing to offer more for the property—even though it is not in an undesirable area. According to Petitioner, nobody had any interest because of high assessments, exorbitant taxes and the fact that you have to fight for years to get a reasonable assessment. *Nowacki testimony*.
  - b. Petitioner contends the property is an undersized, unbuildable lot. He contends the assessor recognizes that fact and still claims an unbuildable lot is worth \$4,800.

Petitioner testified that the assessed value should be \$3,500—even though that amount is 100 times more than he paid for it. *Nowacki testimony; Pet'r Ex. 2.*

- c. According to Petitioner, the assessor shows no ability to accurately assess property because the values flip all over the place. He claims the property record cards show wildly fluctuating values that are indiscriminately applied with values for this property going from \$7,800 to \$9,800 to \$7,900 and then down to \$4,800. Petitioner testified that this situation creates job security for the assessor, but it destabilizes communities. *Nowacki testimony; Pet'r Exs. 1 & 2.*
- d. Petitioner contends a property located at 9018-22 Pottowattomi Trail is comparable to the subject property, but is only assessed at \$3,300. That value would be \$200 less than his requested valuation. *Nowacki testimony.*

17. Summary of Respondent's case:

- a. Respondent contends the property values have not fluctuated as much as Petitioner claims. *Bauhan testimony; Resp't Ex. 1; Pet'r Exs. 1 & 2.*
- b. Respondent argues that Petitioner has not presented any data to support his claim that a property at 9018-22 Pottowattomi is comparable to the subject property. *Metz testimony.*

**ANALYSIS**

18. Petitioner failed to make a prima facie case for any reduction in the assessed value for the 2011, 2013, or 2015 assessment. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. Regardless of the method used to prove a true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Petitioner purchased the property for \$25 at an auction, but he did not present any evidence about when. And Petitioner did not request the property be assessed for the purchase price. Petitioner presented no probative evidence to support the value he claimed. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Petitioner contends a comparable property located on the same street and near the subject property is assessed at \$3,300. Petitioner is attempting to use a comparison approach to establish market value-in-use. In order to effectively do so, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" do not constitute probative evidence. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Other than having a nearby location, Petitioner presented no probative evidence to show that the property at 9018-22 Pottowattomi is comparable to the subject property. The Petitioner failed to present the kind of comparative analysis that *Long* requires.
- e. Petitioner had the burden of proof for all the assessment years at issue. Petitioner offered the same evidence and arguments for all years in an attempt to prove the assessments were incorrect.
- f. Petitioner failed to make a prima facie case for changing the assessments. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### CONCLUSION

- 19. The Board finds for Respondent. The PTABOA, however, determined the 2011 assessed value was \$4,900 and the 2015 assessed value was \$5,000. Consequently, the PRC should be corrected to reflect the actual PTABOA determinations.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2011, 2013, and 2015 assessed values will not be changed.

ISSUED: April 27, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.